

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 05-7155**

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In Re: BERNARD SMITH,

Petitioner.

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On Petition for Writ of Mandamus.  
(CA-05-120-7)

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Submitted: November 22, 2005

Decided: December 6, 2005

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Before MOTZ, TRAXLER, and GREGORY, Circuit Judges.

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Petition denied by unpublished per curiam opinion.

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Bernard Smith, Petitioner Pro Se.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Bernard Smith petitions for writ of mandamus. He seeks an order remanding his case to the district court with directions to apply District of Columbia law instead of the sentencing guidelines to his request for parole.

Mandamus relief is available only when the petitioner has a clear right to the relief sought. See In re First Fed. Sav. & Loan Assn., 860 F.2d 135, 138 (4th Cir. 1988). Further, mandamus is a drastic remedy and should only be used in extraordinary circumstances. See Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); In re Beard, 811 F.2d 818, 826 (4th Cir. 1987). Mandamus may not be used as a substitute for appeal. See In re United Steelworkers, 595 F.2d 958, 960 (4th Cir. 1979).

With these criteria in mind, we conclude Smith is not entitled to mandamus relief. Accordingly, we deny his petition for writ of mandamus. We grant Smith leave to proceed in forma pauperis and deny his motion for appointment of counsel. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED